IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6303 OF 2007

Ismail Usman Mujawar ....Petitioner
V/s
Ramzan Usman Mujawar & Ors..... ....Respondents.

Mr.V.S.Gokhale i/by Mr.S.M.Kamble, Adv. For the petitioner.

Mr.S.S.Patwardhan, Adv. For the respondent No.1.

Mr.N.V.Bandiwadekar, Adv. For respondent No.2.

Mr.F.A.Muilla, Adv. For respondent No.3.

CORAM: A.P.DESHPANDE, J.
9/10/07

PC:

The petitioner claims to be the trustee of the Trust known as Tomb of Hajrat Peer Malik Rehan at Kille Vishalgad, Tal. Shahuwadi. The said Trust is admittedly registered under the provisions of Bombay Public Trusts Act and has been regulated by said provisions. After the WAKF Act of 1995 came into force the Charity Commissioner issued a general circular bearing No.307 dated 24.7.03 purportedly under section 43 of the WAKF act, directing the authorities under the Bombay Public Trusts Act not to take up the proceedings of WAKF properties under the Bombay Public Trust Act till further orders. The present petitioner challenged the said circular by filing writ petition before the Division Bench contending that the petitioner's trust need to be regulated by the provisions of Bombay Public Trust Act and not by the provisions of the WAKF act. It is an admitted position that the Division Bench has granted stay as prayed for by the petitioner in the said petition. After Division Bench granted stay to the circular No.307 the Charity Commissioner issued general instructions to the Officers working under the Bombay

Public Trusts Act to proceed to deal with WAKF properties which are registered under the Bombay Public Trust Act in view of the stay granted to the circular No.307.

2. A change report filed by the respondent is pending on the file of Deputy Charity Commissioner and when the Deputy Charity Commissioner took up the proceedings for adjudication the present petitioner moved an application seeking stay of the proceedings on the ground that writ petitions are pending in this Court. The rejection of the prayer for stay of the proceedings has prompted the petitioner to file the present writ petition seeking stay of the proceedings pending on the file of the Deputy Charity Commissioner. The petitioner is trying to approbate and reprobate at the same time in as much as by filing writ petition before the Division Bench it has contended that the WAKF which are registered under the Bombay Public Trusts Act should continue to be governed by the Bombay Public Trust Act. The said interim relief has been granted by the Division Bench and strangely thereafter the petitioner has contended before the Deputy Charity Commissioner that he should not take up the change report proceedings for adjudication and on rejection of the said prayer present writ petition is filed. The petitioner cannot blow hot and cold at the same time. There is obvious contradiction in the stand taken by the petitioner before the Division Bench and the contention raised in this petition. The necessary corollary of interim order passed by the Division Bench is that the proceedings must now be continued under the Bombay Public Trust Act to the exclusion of the provisions of WAKF act. Hence there being no merit in the writ petition same stands dismissed summarily. Civil Application does not survive in view order passed in the writ petition.

9.10.07